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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1002

GULF-MEDITERRANEAN PORTS CONFERENCE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, FEDERAL MARITIME COMMISSION, ET AL.

No. 1138

FAR EAST CONFERENCE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, FEDERAL MARITIME COMMISSION, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is reported at 313 F. 2d 586. The opinion of the Federal Maritime Commission is reported unofficially at 1962 Am. Mar. Cas. 743.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 1963 (Gulf Pet. 59; Far East Pet. A-1), and petitions for rehearing were denied as to Gulf on February 15, 1963 (Gulf Pet. 64) and as to Far East on February 26, 1963 (Far East Pet. 3). The petition of Gulf for a writ of certiorari in No. 1002 was filed on April 9, 1963, and that of Far East in No. 1138 was filed on May 27, 1963. The jurisdiction of this Court is invoked in both cases under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the failure of the Federal Maritime Commission to disapprove an exclusive-patronage dual-rate system constituted the approval required to legalize the system under Section 15 of the Shipping Act prior to its amendment in 1961.

2. Whether the now-expired dual-rate Moratorium Act of 1958 relieved common carriers by water of reparations liability accruing prior to its enactment for their unlawful use of unapproved dual-rate systems.

STATUTES INVOLVED

Portions of the Shipping Act, 1916, 39 Stat. 728, as amended, 46 U.S.C. 801 *et seq.*, and 1 U.S.C. 109, are set out in the Appendix, *infra*.

STATEMENT

Petitioners Gulf-Mediterranean Ports Conference and Far East Conference are voluntary associations composed of common carrier steamship lines engaged

in the transportation of property between various American and foreign ports. Both petitioners operate as conferences pursuant to general or basic agreements first approved by the Shipping Board[1] in 1930 (in the case of Gulf-Mediterranean) (Gulf Pet. 5, 25), and in 1922 (in the case of Far East) (Far East Pet. 5, 6). This case involves the legality of the dual-rate contract systems employed by petitioners in 1951 and 1952. Under these systems, shippers who agree with the Conference to deal exclusively with Conference members, and not with independent carriers in the trade served by the Conference, receive the benefit of rates lower than those charged shippers who do not so agree. The systems are established by agreement among the members of the Conference. Petitioners' basic agreements, which have from time to time been amended, have never contained any provisions expressly authorizing the use of an exclusive-patronage contract or differentials in freight rates

[1] The Shipping Act, 1916, 39 Stat. 728, as amended, 46 U.S.C. 801 *et seq.*, established the United States Shipping Board to administer the new law. In 1933 the Shipping Board was abolished. Its functions were transferred to the Department of Commerce and in 1936 were assigned to the United States Maritime Commission, which in 1950 was in turn replaced by the Federal Maritime Board. See *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 886-87, n. 7 (S.D.N.Y.), affirmed by an equally divided Court *sub nom. Federal v. Isbrandtsen Co.*, 342 U.S. 950. Under Section 103 of Reorganization Plan No. 7 of 1961, 26 Fed. Reg. 7315, the five-member Federal Maritime Commission succeeded to the regulatory powers and duties of the Maritime Board, which was abolished by Section 304 of the Plan. For convenience we shall refer to the agency as the Commission regardless of the date involved.

in favor of contracting shippers (Gulf Pet. 25–28; Far East Pet. 5).

Until 1949 neither Conference offered an exclusive patronage rate differential to shippers of cotton (Gulf Pet. 26, 29–30; Far East Pet. 7–8). In that year, however, a cotton dual-rate system was initiated by Gulf-Mediterranean, and in 1950 by Far East (*ibid.*). In accordance with what was their customary practice, neither Conference submitted the arrangement to the Commission for formal approval (Gulf Pet. 5, 6, 25, 28; Far East Pet. 8). Nevertheless, routine tariff revisions containing dual rates for cotton were filed by both, as well as minutes of Conference meetings in which references were made to cotton dual-rate arrangements (Gulf Pet. 6, 35–36; Far East Pets. 5, 8).

The present case was initiated by the Kempner respondents (H. Kempner, Galveston Cotton Co. and Texas Cotton Industries), shippers of cotton from ports on the Gulf of Mexico to various destinations in the Mediterranean and the Far East, which, beginning in 1950, were charged the higher noncontract rate for shipments on Conference vessels (Gulf Pet. 5, 31; Far East Pet. 8). The differential between contract and noncontract rates was 8½ per ton for the Far East Conference and 20 percent for the Mediterranean Conference (Gulf Pet. 32).

In early 1953 the Kempner respondents filed complaints with the Commission against the Conferences and their carrier members, claiming reparations in the amount of the differential between contract rates and the charges paid by them on various shipments

made in 1951 and 1952. The exclusive-patronage dual-rate systems employed by the Conference were alleged to violate the Shipping Act of 1916 and the Sherman Antitrust Act. Complainants charged that the dual-rate systems which covered their shipments violate Section 14 of the Shipping Act; that the arrangements had never been, and could not lawfully be, legalized by approval of the Commission; and that the systems and the rates thereunder were unduly and unreasonably prejudicial, discriminatory, and disadvantageous in violation of Sections 16 and 17 of the Shipping Act (Gulf Pet. 19–21).

The Commission consolidated the complaints for hearing with a similar complaint filed by Isbrandtsen Co., an independent carrier which had dealt as a shipper at noncontract rates with members of the Conference in order to meet its obligations to the Kempner respondents for the carriage of certain shipments (Gulf Pet. 21). In 1957, after hearings, the examiner submitted a recommended decision. In 1959, after oral argument before it, the Commission postponed resolution of the controversy until the completion of "pending litigation and Congressional legislation" with respect to dual-rate systems. After further argument in 1961, the Commission, then consisting of two members, issued its report on August 9, 1961 (*ibid.*).

The "pending litigation" of which the Commission had spoken was the litigation culminating in the decision of this Court in *Federal Maritime Board* v. *Isbrandtsen Co.*, 356 U.S. 481. There the Court held that a conference dual-rate system with the purpose

or effect of stifling independent competition was a violation of Section 14 of the Shipping Act. Immediately following the decision, Congress enacted the dual-rate moratorium Act, August 12, 1958 (72 Stat. 574) which added to Section 14 a proviso:

> * * * That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section 15 of this Act.

The moratorium, as extended, remained in effect until the passage of the 1961 amendments to the Shipping Act (75 Stat. 762), which added the explicit requirement that Commission approval of a dual-rate system shall be "by order" (46 U.S.C. 813a).

The Commission concluded that the Kempner respondents were not entitled to reparations for the amounts they paid to Conference members in excess of contract rates.[2] The dual-rate systems they challenged were found to have received official sanction by

[2] The Commission found, however, that Isbrandtsen had been improperly denied the right to sign an exclusive-patronage contract and thereby obtain the benefit of the lower contract rates, and awarded Isbrandtsen reparations against States Marine Lines and Waterman S.S. Corp., the carriers to whom the higher rate had been paid (Gulf Pet. 55). States Marine petitioned for review of this portion of the order and Isbrandtsen petitioned for review of the order insofar as interest on the amount of its award was denied. The court of appeals affirmed

the Commission's approval of the Conferences' basic organizational agreements, as well as its acceptance for filing of, and failure to act upon, (a) the minutes of Conference meetings containing references to the dual-rate contract arrangements, and (b) the tariffs of Conference members containing both contract and noncontract rates (Gulf Pet. 35–36). The Commission also seems to have held that the 1958 amendment to Section 14 of the Shipping Act had retroactively legalized the dual-rate systems of which petitioners complained (Gulf Pet. 33, 45–46, 48). Finally, the Commission found that the contract-noncontract rate differentials were not discriminatory, unfair, or detrimental to the commerce of the United States, nor were they unreasonably or unduly prejudicial (Gulf Pet. 51). Accordingly, the Commission denied the Kempner respondents the reparations they sought and refused to disapprove the challenged dual-rate systems (Gulf Pet. 55–58).

The Kempner respondents filed a petition to review the order of the Commission. The United States, a statutory respondent by virtue of Section 4 of the Judicial Review Act (5 U.S.C. 1034), confessed error on the ground that the challenged dual-rate systems were illegal in that (a) they had not been approved, and (b) the 1958 statutory amendment did not retroactively legalize the systems and thus cut off accrued reparations liability.

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the award of reparations but reversed the denial of interest. States Marine has petitioned for certiorari to review that decision. *States Marine Lines, Inc.* v. *Federal Maritime Commission*, No. 1082, this Term.

The court of appeals agreed and remanded the case to the Commission for the assessment of reparations. It held *per curiam* that the silence of the Commission did not constitute "approval" of the discriminatory rates, and that the rates were therefore unlawful. It further concluded that the 1958 amendment was prospective only and hence does not relieve an offender from liability for reparations arising from a violation which occurred prior to its enactment (Gulf Pet. 60-61).

The Federal Maritime Commission has not sought certiorari to review the judgment below.

ARGUMENT

The decision of the court of appeals was plainly correct. In any event, the issues raised have no current significance, since petitioners' contentions are based upon statutory language which has subsequently been repealed or amended, and the statute of limitations has already run with respect to any similar claims which might be governed by the language involved here.

1. The court below correctly concluded that Commission approval of a dual-rate system must evidence an evaluation of the merits of the arrangement more clearly than does the "tacit approval" alleged. This Court, confirming the consistent rulings of the lower courts, has held that approval of a dual-rate system must be given, if at all, on the basis of "precise findings" on the purpose and effect of the arrangement. *Federal Maritime Board* v. *Isbrandtsen Co.*, 356 U.S. 481, 499. *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51, 57 (C.A.D.C.), certiorari denied, 347 U.S. 990;

River Plate & Brazil Conferences v. *Pressed Steel Car Co.*, 227 F. 2d 60, 63 (C.A. 2); *Pacific Westbound Conference* v. *Leval & Co.*, 201 Ore. 390, 269 P. 2d 541, certiorari denied, 348 U.S. 897; *Isbrandtsen Co.* v. *United States*, 96 F. Supp. 883, 886, 892 (S.D.N.Y.), affirmed by an equally divided Court *sub nom. Rederi* v. *Isbrandtsen Co.*, 342 U.S. 950; *Isbrandtsen Co.* v. *United States*, 81 F. Supp. 544 (S.D.N.Y.), appeal dismissed *sub nom. Rederi* v. *Isbrandtsen Co.*, 336 U.S. 941. In light of the antitrust immunity which its approval affords, *McLean Trucking Co.* v. *United States*, 321 U.S. 67, 87; *Isbrandtsen Co.* v. *United States*, 211 F. 2d 51, 57 (C.A.D.C.), certiorari denied, 347 U.S. 990, it is incumbent on the Commission to make findings which will ensure the effectiveness of an agency check on conference behavior. Cf. *Silver* v. *New York Stock Exchange*, No. 150, this Term, decided May 20, 1963, slip op., pp. 17. Plainly, the "tacit approval" for which petitioners argue (Gulf Pet. 7–8, 11–12; Far East Pet. 6–7, 12) does not meet the standard of responsible and articulate consideration which the Shipping Act imposes. Nor may counsel now seek, as does petitioner Far East (Far East Pet. 12), to draw inferences of approval from agency actions which the Commission never considered to constitute the deliberate exercise of judgment required by the Act. See *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156, 167–169.

We note that the "tacit approval" of the dual-rate system for which petitioners contend occurred, according to the Commission, in 1949 for the Mediterranean Conference and in 1950 for the Far East Conference (Gulf Pet. 36). This was 4 and 5 years, respectively, before *Isbrandtsen Co.* v. *United States*, 211

Nor is there any merit in petitioners' contention that the moratorium Act of 1958 retroactively validated the unapproved dual-rate systems then in use. Indeed, it is not clear that Congress intended to legalize such arrangements even prospectively, much

F. 2d 52, *supra*, made clear beyond doubt that prior Commission approval of dual-rate arrangements was necessary. At the time that the "tacit approval" is said to have taken place, the Commission treated dual-rate arrangements as an ordinary tariff change with respect to which no administrative action was necessary (*Isbrandtsen Co. v. United States*, 211 F. 2d at 56). The Commission brief upon which petitioner Far East relies (Far East Pet. 7) merely restated the agency's argument since rejected in *Isbrandtsen Co. v. United States*, 211 F. 2d at 56—that approval of a basic conference agreement was sufficient to legalize the conference's dual-rate systems. The Commission's General Order 76, moreover, which required the filing of specific information regarding dual-rate systems and which was admittedly adopted in order to provide the Commission with necessary information it theretofore had lacked regarding dual-rate arrangements, was not issued until 1953. *See Isbrandtsen Co. v. United States*, 211 F. 2d at 53, n. 2. And the Commission has stated to the court of appeals that approval of a dual-rate arrangement was not obtained even by filing of the information required by General Order 76. Brief for the Federal Maritime Board, p. 17, *Isbrandtsen Co. v. United States*, 211 F. 2d 51, *supra*.

See *Anglo Canadian Shipping Co., Ltd. v. United States*, 251 F. 2d 405, 410–411, 414 (C.A. 9); S. Rep. 1297, 85th Cong., 2d Sess. 2 (the moratorium Act allows "the continued use by conference of a dual-rate system *validly in effect on the date* of [this Court's] decision" (emphasis added)) in *Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481). And the "status quo" which the moratorium Act was intended to preserve (*see Empire State Highway Transportation Ass'n, Inc. v. Federal Maritime Board, supra*, 291 F. 2d 336, 341 (C.A.D.C.), certiorari *denied*, 368 U.S. 931; 104 Cong. Rec. 12908, 13041; Hearings on H.R. 677 Before the Merchant Marine and Fisheries Subcommittee of the Senate Commerce Committee, 85th Cong., 1st Sess. 16; S. Rep. 1709, 85th Cong., 2d Sess. 5, 6, 9) plainly included

less to relieve carriers of liability for reparations arising out of violations committed before the adoption of the Act. Compare, *e.g.*, the Portal-to-Portal Act of 1947, 61 Stat. 84, 29 U.S.C. 251 *et seq.* Retroactivity, this Court has noted, "is not favored, except upon the clearest mandate." *Claridge Apartments Co.* v. *Commissioner*, 323 U.S. 141, 164. Moreover, an interpretation of the moratorium Act which would retroactively destroy petitioners' accrued liability under the Shipping Act is precluded by 1 U.S.C. 109, which provides:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. * * *

In an analogous context this statute was held (in an opinion subsequently relied upon by this Court in *Great Northern Railway Co.* v. *United States*, 208 U.S. 452, 469) to authorize the prosecution of a rail common carrier for failure to file rates in accordance

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the rule that unapproved dual-rate arrangements were unlawful, would remain unlawful unless and until approved, and even if once approved would become again unlawful if subsequently disapproved.

To the extent that the so-called Moratorium Act operated, as petitioners suggest (Gulf Pet. 14-15; Far East Pet. 14), as a limitation upon the jurisdiction of tribunals, its expiration before decision in the court of appeals left that body free to rule as it did with respect to the sufficiency of the Commission's "approval" of the dual-rate systems at issue.

with the Elkins Act, 32 Stat. 847, notwithstanding that the relevant provisions of the Elkins Act had been replaced by the Hepburn Act, 34 Stat. 584, before the indictment was returned. *United States* v. *New York Cent. & H. R. R. Co.*, 153 Fed. 630, 635 (W.D.N.Y.), reversed on other grounds, 166 Fed. 267 (C.A. 2). See also *Moorehead* v. *Hunter*, 198 F. 2d 52 (C.A. 10) (holding that Section 109 applies in cases of amendment as well as repeal).[6]

2. In any event, since Section 14b of the Shipping Act (pp. 14–16, *infra*), added in 1961 requires a formal Commission order of approval, the nature of the approval required for dual-rate systems by the pre-1961 version of the statute has become a matter of purely historical concern.[7] Nor would resolution of the issue by this Court affect any significant number of cases involving events prior to 1961. The limitations period for reparations actions before the Federal Maritime Commission is two years (46 U.S.C. 821). Hence any claim based upon the illegality of a dual-rate system which accrued before May 19, 1958—the critical date specified in the moratorium law—would have had to be filed by May 19,

[6] Petitioner Far East seeks to resolve here the measure of Kempner's damages (Far East Pet. 17–19). That issue is clearly premature as to Kempner, since it has not yet been passed upon by the Commission.

[7] While petitioner Far East seeks to use the present case as a vehicle for adjudicating the nature of the Section 15 approval requirement in other contexts (Far East Pet. 11), no such problems are involved here. Only the question of dual-rate systems prior to 1958 is now before the Court. Petitioner's hypothetical issues can be resolved when an appropriate case arises.

1960. We are advised by the Deputy General Counsel of the Commission that, as far as he is aware, not more than one such case filed before that date is presently pending.

CONCLUSION

The petitions for certiorari raise no issues of continuing importance and should be denied.

Respectfully submitted.

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JUNE 1963.

It may be, as petitioners argued below (see also Gulf Pet. 14; Far East Pet. 16), that the moratorium Act prospectively validated the use of unapproved dual-rate systems. If so, neither the approval question arise with respect to claims accruing *after* the moratorium date of May 19, 1958. But in any event no such claim is involved here, nor does the present case raise the question of the prospective effect of the moratorium law upon unapproved dual-rate systems.

APPENDIX

The permanent dual-rate law, Section 14b of the Shipping Act, 1916, as amended, October 3, 1961, 75 Stat. 762, 46 U.S.C. 813a, provides as follows:

> Notwithstanding any other provisions of this chapter, on application the Federal Maritime Commission (hereinafter "Commission"), shall, after notice, and hearing, by order, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in

no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: *Provided, however,* That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself, or with the same intent permits himself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: *Provided, however,* That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (8) excludes cargo of the contract shippers which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: *Provided, however,* That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the foregoing exception; and (9) contains such other provisions not inconsistent herewith as the Commission shall require or

permit. The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: *Provided, however,* That after such terminations the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section. Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission; before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification. As used in this section, the term "contract shipper" means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section.

Section 15 of the Shipping Act, 1916, 39 Stat. 733, as amended, 46 U.S.C. 814, until its amendment on October 3, 1961, provided as follows:

> Every common carrier by water, or other person subject to this chapter, shall file immediately with the Federal Maritime Board a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such

carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Board may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the Board shall be lawful until disapproved by the Board. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the Board.

All agreements, modifications, or cancellations made after the organization of the Board shall be lawful only when and as long as approved by the Board, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly,

any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of sections 1–11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Section 15 of the Shipping Act, 1916, 39 Stat. 733, as amended, 75 Stat. 763, as it appears in 46 U.S.C. 814, provides as follows:

> Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.
>
> The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or

unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this chapter, and shall approve all other agreements, modifications or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification or cancellation; except that tariff rates, fares, and charges,

and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 813a of this title which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 817(b) of this title and with the provisions of any regulations the Commission may adopt.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 813a of this title, shall be excepted from the provisions of sections 1–11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section or of section 813a of this title shall be liable to a penalty of not more than $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

The interim dual-rate moratorium law, 72 Stat. 574, as amended, September 19, 1961, 75 Stat. 521, provided as follows:

That section 14 of the Shipping Act, 1916, is amended by inserting at the end thereof the following: "*Provided*, That nothing in this section or elsewhere in this Act, shall be construed or applied to forbid or make unlawful any dual rate contract arrangement in use by the members of a conference on May 19, 1958, which conference is organized under an agreement approved under section 15 of this Act by the regulatory body administering this Act, unless and until such regulatory body disapproves, cancels, or modifies such arrangement in accordance with the standards set forth in section

15 of this Act. The term 'dual rate contract arrangement' as used herein means a practice whereby a conference establishes tariffs of rates at two levels the lower of which will be charged to merchants who agree to ship their cargoes on vessels of members of the conference only and the higher of which shall be charged to merchants who do not so agree."

SEC. 2. This Act shall be effective immediately upon enactment and shall cease to be effective on and after October 15, 1961: *Provided, however,* That contracts in effect midnight September 14, 1961, shall remain in effect until midnight October 15, 1961, unless such contracts terminate earlier by their own terms, or are rendered illegal under the terms of the first section of this Act.

The saving statute, 1 U.S.C. 109, provides as follows:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.